action was barred before the proof of death could be made? Should not the court in such a case create the artificial presumption of life to the end of the seven year period, in order to preserve the right of action?

A. M. K.

EVIDENCE: RELEVANCY: SALES OF OTHER LAND.—*In the Matter of the Estate of Ross*,[1] for the purpose of determining the amount due the State of California under the inheritance tax law, it was necessary to prove the value of certain land. To do this, counsel for the state sought to establish by witnesses the prices at which other property in the neighborhood had been actually sold, at or near the time of the death of the decedent. Objection was sustained to the introduction of such evidence to prove the value, and this ruling by the trial court was held proper by the Supreme Court.

The question of how to prove land value is one which has frequently arisen and with varying results. It has been uniformly held that the value of land may be shown by proving market value, but the courts have divided on the question as to what evidence is admissible to prove this. Some jurisdictions have allowed only opinion testimony,[2] while others have admitted proof of collateral sales of land similarly situated to prove the value of the land in controversy.[3]

All the courts which have considered this question have admitted the great probative value of evidence of the latter class, but a few have excluded it primarily for the reason that such evidence involves, in the case in hand, a confusion of issues by in fact making an issue of every sale so introduced.[4] The California courts, in all their decisions, with possibly one exception,[5] have accepted this view and have excluded such evidence.[6] And so it can be said that in proving land value in California evidence of collateral and extrinsic sales, even though of immense probative value, is inadmissible on account of its tendency to confuse the issue.

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[1] (Sept. 20, 1915), 50 Cal. Dec. 304.

[2] Central Pac. R. Co. v. Pearson (1868), 35 Cal. 247; De Freitas v. Town of Suisun (Cal., 1915), 149 Pac. 553; Gorgas v. Philadelphia, etc. R. Co. (1906), 215 Pa. 501, 64 Atl. 680; Richardson v. Webster City (1900), 111 Iowa, 427, 82 N. W. 920; Matter of Thompson (1877), 127 N. Y. 463, 28 N. E. 389.

[3] Paine v. Boston (1862), 4 Allen, 168; Galway v. Metropolitan El. R. Co. (1890), 35 N. Y. 628, 13 N. Y. Supp. 47, 28 N. E. 479; Belding v. Archer (1902), 131 N. Car. 287, 42 S. E. 800; Tenn. C. I. & R. Co. v. State (1904), 141 Ala. 103, 37 So. 433; American States S. Co. v. Milwaukee N. R. Co. (1909), 139 Wis. 199, 120 N. W. 844.

[4] See cases cited in note 2.

[5] Muller v. Railway Co. (1890), 83 Cal. 240, 23 Pac. 265.

[6] See Cal. cases in note 2, supra; also Spring Valley W. W. v. Drinkhouse (1891), 92 Cal. 528, 28 Pac. 681; Santa Ana v. Harlin (1893), 99 Cal. 544, 34 Pac. 224.

In other states a more logical rule has been adopted—a rule of common sense—the test as to the admissibility of such evidence being whether the objection that the evidence confuses is of sufficient weight to offset its probative value. Discretionary power is, under this theory, given to the trial court to exclude or admit and thus the question in each case arises as to how far evidence of collateral sales is admissible to prove the value of the land in question.[7] If it unnecessarily complicates and confuses the issue, it will be excluded, but if the confusion is slight, it will be admitted on account of its great probative value.

Why the California courts should not adopt this rule it is hard to conceive, for it is clearly based on common sense and reasonable necessity. The tendency should be to allow the introduction of such evidence, for it serves to elicit the truth, unless it involves in the case a disproportionate confusion of issues. There is no logical reason why the value of land should not be proved in court as it is proved to the satisfaction of the business man out of court, and "it may be said that in determining values of marketable land, the value of other land of similar quality is strongly evidential and is so treated by business men, and all argument and protestation conceivable cannot alter the fact that the commercial world acts on its relevancy." [8]

M. P. G.

EVIDENCE: WITNESSES: COMPETENCY OF OWNER TO TESTIFY AS TO VALUE.—In general, "a witness called upon to give an opinion on the subject of value, whether offered as an expert or not, must lay a proper foundation for the introduction of his opinion, by showing he possesses the means to form an intelligent opinion, derived from an adequate knowledge of the nature and kind of the property in controversy, and of its value." [1] But according to the case of *Willard v. Valley Gas and Fuel Company*,[2] this rule does not apply when the witness is an owner testifying as to the value of his own property. In that case certain household furniture, some scrap books containing clippings, and a rare book were destroyed by the negligence of the defendant, and the court held that it was not error to allow the plaintiffs, the owners, to give their opinions as to the value of these things, though they were not shown to have knowledge as to values. This rule, that an owner is qualified by that relationship to testify as to the value of realty,[3] or common classes of personalty, such as clothing, furniture, farm implements,

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[7] Paine v. Boston (1862), 4 Allen, 168; Shattuck v. R. Co. (1863), 6 Allen, 115; Brown v. New Jersey S. L. R. Co. (1908), 76 N. J. Law, 795, 71 Atl. 271.

[8] 1 Wigmore on Evidence, § 463.

[1] Reed v. Drais (1895), 67 Cal. 491, 8 Pac. 20.

[2] (Aug. 13, 1915), 50 Cal. Dec. 259, 151 Pac. 286.

[3] Spring Valley Water Works v. Drinkhouse (1891), 92 Cal. 528, 28 Pac. 681; 17 Cyc. 112; Chamberlayne on Evidence, § 2149.